

identified area. Initially, the data used are U.S. Decennial Census data.

(b) The data for the need variables shall be adjusted annually beginning the year after the need data is collected, using Indian Health Service projections based upon birth and death rate data as provided by the National Center for Health Statistics.

(c) Indian tribes may challenge the data described in paragraphs (a) and (b) of this section pursuant to § 1000.336.

[63 FR 12349, Mar. 12, 1998, as amended at 72 FR 20025, Apr. 20, 2007]

**§ 1000.332 Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?**

Yes. HUD shall provide notice to the Indian tribe or TDHE of the data to be used for the formula and projected allocation amount by August 1.

**§ 1000.334 May Indian tribes, TDHEs, or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?**

Yes. Provided that the data are gathered, evaluated, and presented in a manner acceptable to HUD and that the standards for acceptability are consistently applied throughout the Country.

**§ 1000.336 How may an Indian tribe, TDHE, or HUD challenge data or appeal HUD formula determinations?**

(a) An Indian tribe, TDHE, or HUD may challenge data used in the IHBG Formula and HUD formula determinations regarding:

- (1) U.S. Census data;
- (2) Tribal enrollment;
- (3) Formula area;
- (4) Formula Current Assisted Stock (FCAS);
- (5) Total Development Cost (TDC);
- (6) Fair Market Rents (FMRs); and
- (7) Indian Health Service projections based upon birth and death rate data provided by the National Center for Health Statistics.

(b) An Indian tribe or TDHE may not challenge data or HUD formula determinations regarding Allowable Expense Level (AEL) and the inflation factor.

(c) The challenge and the collection of data and the appeal of HUD formula determinations is an allowable cost for IHBG funds.

(d) An Indian tribe or TDHE that seeks to appeal data or a HUD formula determination, and has data in its possession that are acceptable to HUD, may submit the data and proper documentation to HUD. Data used to challenge data contained in the U.S. Census must meet the requirements described in § 1000.330(a). Further, in order for a census challenge to be considered for the upcoming fiscal year allocation, documentation must be submitted by March 30th.

(e) HUD shall respond to all challenges or appeals not later than 45 days after receipt and either approve or deny the validity of such data or challenge to a HUD formula determination in writing, setting forth the reasons for its decision. Pursuant to HUD's action, the following shall apply:

(1) In the event HUD challenges the validity of the submitted data, the Indian tribe or TDHE and HUD shall attempt in good faith to resolve any discrepancies so that such data may be included in the formula allocation.

(2) Should the Indian tribe or TDHE and HUD be unable to resolve any discrepancy within 30 calendar days of receipt of HUD's denial, the Indian tribe or TDHE may request reconsideration of HUD's denial in writing. The request shall set forth justification for reconsideration.

(3) Within 20 calendar days of receiving the request, HUD shall reconsider the Indian tribe or TDHE's submission and either affirm or reverse its initial decision in writing, setting forth HUD's reasons for the decision.

(4) Pursuant to resolution of the dispute:

(i) If the Indian tribe or TDHE prevails, an adjustment to the Indian tribe's or TDHE's subsequent allocation for the subsequent year shall be made retroactive to include only the disputed fiscal year(s); or

(ii) If HUD prevails, it shall issue a written decision denying the Indian tribe or TDHE's petition for reconsideration, which shall constitute final agency action.